

CONTRACT #5
RFS # 317.04-063

**Department of Finance &
Administration
Insurance Administration**

VENDOR:
Medstat Group, Inc.



RECEIVED

JUN 14 2007

FISCAL REVIEW

STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
INSURANCE ADMINISTRATION
312 Eighth Avenue North
Suite 2600 William R. Snodgrass Tennessee Tower
Nashville, Tennessee 37243
FAX (615) 253-8556

Dave Goetz
COMMISSIONER

Richard Chapman
EXECUTIVE DIRECTOR

MEMORANDUM

To: James White, Executive Director, Fiscal Review Committee

From: Richard Chapman, Executive Director *Richard Chapman*

Date: June 12, 2007

RE: Request for a Contract for Cover Tennessee Plans with The Medstat Group, Inc.

Please find attached a Non-Competitive Contract request to enter into a contract with The Medstat Group, Inc. for the Cover Tennessee products signed by Commissioner Goetz. The contract with The Medstat Group, Inc. is for the provision of data warehouse and decision support system services that are employed to analyze healthcare data to determine cost and utilization measures and trends.

The Medstat contract will have its first practical application with transmittal of data from the Cover Tennessee plans (AccessTN, CoverTn and CoverKids) 45 days after the end of the first quarter of plan operations that have an April 1 start date. That step will be executed by Blue Cross BlueShield of Tennessee and will take place on approximately August 15. Secondly, it was necessary to have the contracts in place with Blue Cross for plan administration before we could finalize discussions on the elements to be included in the data transmittal, the configuration of the data layout and the dictionary for coding of information. Finally, it took plan management who has been occupied developing the plan eligibility provisions and benefit design and conducting procurements some time to identify and describe the key data elements to be collected.

The creation of a separate contract was the recommendation of the Contract Services SubCommittee of the Fiscal Review Committee and was developed to address the Cover Tennessee Plans (CoverTN, CoverKids, AccessTN and CoverRx) for health insurance data management information decision support services (see attached copy). The Medstat Group, Inc. currently provides for the plans administered by the Division of Insurance Administration for the State, Local Education and Local Government Insurance Committees.

Thank you for your consideration of this request.

Attachment



**GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE**

320 Sixth Avenue, North - 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Rep. Charles Curtiss, Chairman
Representatives

Curt Cobb
Curtiss Johnson
Gerald McCormick
Mary Pruitt
Craig Fitzhugh, *ex officio*
Speaker Jimmy Naifeh, *ex officio*
Donna Rowland
David Shepard
Curry Todd
Eddie Yokley

Sen. Douglas Henry, Vice-Chairman
Senators

Doug Jackson
Bill Ketron
Paul Stanley
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*
Reginald Tate
Jamie Woodson

M E M O R A N D U M

TO: The Honorable Dave Goetz, Commissioner
Department of Finance and Administration

FROM: Charles Curtiss, Chairman, Fiscal Review Committee
Bill Ketron, Chairman, Contract Services Subcommittee CC
BK

DATE: April 24, 2007

SUBJECT: **Contract Comments**
(Contract Services Subcommittee Meeting 4/23/07)

RFS# 317.04-003

Department: Finance & Administration

Division: Insurance Administration

Contractor: The Medstat Group, Inc.

Summary: Vendor is currently responsible for providing data warehouse and decision support system services that are used to analyze healthcare data to determine cost, utilization measures and trends. This amendment will add the Cover Tennessee Plans (CoverTN, CoverKids, AccessTN and CoverRX) to the existing contract for health insurance data management.

Maximum liability: \$4,450,000

Maximum liability with amendment: \$4,790,000

After review, the Fiscal Review Committee voted to recommend approval as a stand-alone contract rather than an amendment to an existing contract.

cc: Mr. Richard Chapman, Executive Director
Mr. Robert Barlow, Director, Office of Contracts Review




STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
INSURANCE ADMINISTRATION
312 Eighth Avenue North
Suite 2600 William R. Snodgrass Tennessee Tower
Nashville, Tennessee 37243
FAX (615) 253-8556

Dave Goetz
COMMISSIONER

Richard Chapman
EXECUTIVE DIRECTOR

MEMORANDUM

To: Commissioner M. D. Goetz, Jr.

From: Richard Chapman 

Date: June 12, 2007

Re: Contract Start Date

This is to request a start date for the contract with The Medstat Group, Inc. for decision support services in advance of 60 days after receipt of this contract.

This contract secures the services of The Medstat Group, Inc. for the Cover Tennessee products. This firm currently provides to decision support services to the the State regarding the plans sponsored by the State, Local Education and Local Government Insurance Committees.

Given the recent awards for the implementation of these programs, dealing efficiently and effectively with all facets of implementation of the program is in the best interest of the State.

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	317.04-063	
2) State Agency Name :	F&A – Division of Insurance Administration	
3) Service Caption :	Medical Claims decision support system; data storage and analysis	
4) Proposed Contractor :	The Medstat Group, Inc.	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	May 1, 2007	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	December 31, 2008	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$340,000	
8) Approval Criteria : (select one)	<input checked="checked" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :	<p>This contract with the Medstat Group, Inc. to provide health insurance data management information decision support services for Cover Tennessee plans. Medstat currently provides these same services for the plans administered by the Division of Insurance Administration for the State, Local Education and Local Government Insurance Committees.</p>	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	<p>Cover Tennessee is comprised of three insurance plans (CoverTN, CoverKids and AccessTN) and a pharmacy assistance program. The Cover Tennessee plans need the same level of decision support services available through Medstat for the State sponsored plans in order to ensure program integrity and plan accountability. The implementation phase of the four plans is occurring and it is to the State's advantage to add the Cover Tennessee Plans at this time. This contract allows for the data management services to occur within a much shorter timeframe and thereby provide the Office of Inspector General and the program directors with valuable information now.</p>	
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :	<p>Currently these services were acquired for the State, Local Education and Local Government Plans for the respective Insurance Committees through a competitive RFP process.</p>	
12) Name & Address of the Proposed Contractor's Principal Owner(s) : (not required if proposed contractor is a state education institution)		

The MEDSTAT Group, Inc., 777 East Eisenhower Parkway, Ann Arbor, MI 48108

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

The contractor has been providing the decision support services for the State sponsored plans since January 1, 1995. They have consistently met the requirements of the contract or exceeded expectations of the State.

14) Documentation of Office for Information Resources Endorsement :

(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :

(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

16) Documentation of State Architect Endorsement :

(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

Currently this Contractor performs this service for the existing State sponsored plans. DIA staff are well versed with the business practices and reporting formats of the vendor. To enter into a competitive procurement now that could result in another vendor for these plans would exceed current staff expertise and availability.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :

(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

The State benefits from entering into this contract in three ways.

First, it is anticipated that these services will not be as costly under this contract with the same vendor as implementing a new contract or a new system with a different vendor. Based on the vendor's cost estimates for adding the additional programs under this separate contract versus initiating a new contract with a brand new vendor the State will save an estimated (\$300,000) from the reduced fees made possible by amending the existing contract with Medstat.

Second, amending the current contract enables speed of implementation with a proven system. By adding the Cover Tennessee programs to the existing decision support vendor we are able to implement first quarter data feeds on each of the programs more quickly than if we had conducted a new competitive procurement.

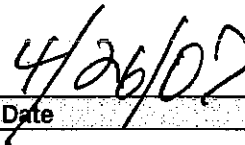
Finally, if the State were to procure a different vendor for these services, the State would incur additional personnel expense in staffing and training on a new system and would likely have different reporting metrics than the public sector plans. The Division can leverage existing staff and staff expertise, thereby saving time and money by using the same vendor under this new contract. The Division will also benefit from easy comparison of plan performance across all Division-managed insurance programs.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



Agency Head Signature



Date

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
THE MEDSTAT GROUP, INC.**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and The Medstat Group, Inc., hereinafter referred to as the "Contractor," is for the provision of health insurance management information decision support services for the Cover Tennessee Plans administered by the Department of Finance and Administration, Division of Insurance Administration as further defined in the "Scope of Services."

The Contractor is a for-profit corporation.

The Contractor's Vendor Identification Number (FEIN) is 06-1467923.

The Contractor's address is:

777 East Eisenhower Parkway
Ann Arbor, Michigan 48108

The Contractor's place of incorporation or organization is Delaware.

A SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall provide health insurance management information services and a decision support system through the Contractor's organization to participants in the Cover Tennessee programs (CoverTN, AccessTN, CoverKids, and CoverRX), hereinafter jointly referred to as Programs, in accordance with this contract.

More specifically, the Contractor shall provide the following fixed fee services:

1. Database design, installation, and update services

- a. Customized medical claims database design and implementation to meet the State's ongoing reporting and analytical objectives.
- b. Implementation of ongoing data quality assurance program to identify and assist in correcting claims data problems.
- c. Receipt of monthly eligibility and quarterly claims data extracts by Cover Tennessee carrier(s).
- d. Quarterly database updates.
- e. Online access to Contractor and user defined norms.

2. Application software

- a. On-line access (via secure URL) to the Contractor's application software including: Trend, Clinical, Provider, Location, Family, Quality of Care, Financial Management, and Custom Reporting; Hospital and Physician Profiling; Data Subsetting and Norms Creation.
- b. Contractor computer-to-personal computer interface software.
- c. Access to Contractor's "Medstat Advantage Suite" application software enhancements.
- d. An Advantage Suite Database is to be built by the Contractor for the State's Division of Insurance Administration, along with "security views" which allow the Office of Inspector General to access this same data in order to detect fraud and abuse while not being able to access the State's public sector plan's data. Further, the Contractor will build a DataProbe database solely for the purpose of access by the Office of Inspector General (OIG) for fraud and abuse detection. Contractor will be able to offer the ability for certain users (e.g. OIG) to be able to view unencrypted/unmasked data on the Cover Tennessee programs, in both the Advantage Suite and DataProbe databases. The Advantage Suite

database shall be comprised of claims and eligibility data from the CoverTN, AccessTN, and CoverKids programs; the DataProbe database shall be comprised of claims and eligibility data from the CoverTN, AccessTN, CoverKids, and CoverRX programs.

3. Computer Access

- a. Mainframe disk storage and processing to perform updates, service the database, and provide on-line access to State's users.
- b. Background mode will be provided.

4. MarketScan_{sm} Products (Available in exchange for the inclusion of the State's data into the MarketScan_{sm} databases.)

- a. On-line access to MarketScan_{sm} data libraries (including populated geographic, industry, and demographic breakdowns).

5. Consulting and Support

- a. Basic account management, data management, and analytical support.
- b. Two-day basic training session held at the Contractor's headquarters for one user on the Advantage Suite software. Three-day basic training at the Contractor's headquarters per license on the The DataProbe software provided by the Contractor.
- c. Ongoing telephone support provided from 7:00 a.m. to 4:30 p.m. CST, Monday through Friday.
- d. Monthly status and conference calls to assess vendor performance and ongoing work plans and details.
- e. Invitation to annual customer and user's group conference registration fee for up to two individuals paid as part of Contract.
- f. Advantage Suite end user's training manual and Field Definitions Guide.

6. Product Licenses

Effective May 1, 2007 the Contractor shall provide the State with up to eight licenses to Contractor's NetEffect product at no cost to the State and up to six licenses to Contractor's Advantage Suite product at an established rate detailed in C.3.a during the term of the contract. The licenses would include any and all updates to NetEffect and Advantage Suite.

B. CONTRACT TERM:

- B.1. This Contract shall be effective for the period commencing on May 1, 2007 and ending on December 31, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Hundred and Forty Thousand Dollars (\$340,000.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the

Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

Service	Amount
Provision of health insurance management information decision support services Per Member Per Year (PMPY)	\$1.25

The Contractor shall submit quarterly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated. Payments by the State to the Contractor will be made every quarter based on prior quarter average enrollment during the term of the contract. The Contractor shall be compensated in an amount no less than \$9,720 for the period July 1, 2007 through December 31, 2007 and no less than \$19,440 for calendar year 2008.

- C.3.a. Upon satisfactory product implementation and written confirmation from the State, the State will reimburse the Contractor the amount of Forty-Six Thousand Seven Hundred Dollars (\$46,700.00) for the one time cost of implementing the Cover Tennessee Programs and a set up fee of Fifteen Hundred Dollars (\$1,500.00) per additional custom field. In addition, the Contractor shall provide the State with one (1) DataProbe license for Five Thousand Dollars (\$5,000.00) and up to an additional six (6) Advantage Suite product licenses at Three Thousand dollars (\$3,000.00) per license.
- C.3.b. Beginning July 1, 2007, the State will reimburse the Contractor Six Thousand Seven Hundred and Fifty Dollars (\$6,750.00) for each DataProbe product quarterly update upon written confirmation from the State, and Five Hundred Dollars (\$500.00) per quarter for the cost of eligibility and claims updates for the Cover Tennessee programs.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract or any amendment thereof until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of

this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document as Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or

provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Ms. Marlene D. Alvarez, Manager of Procurement and Contracting
Department of Finance and Administration, Division of Insurance Administration
26th Floor, William R. Snodgrass Tennessee Tower
312 Eighth Avenue North
Nashville, TN 37243
Email Address: marlene.alvarez@state.tn.us
Telephone: 615-253-8358
Fax: 615-253-8556

The Contractor:

Ms. Jennifer L Thompson, Manager of Client Services
The Medstat Group, Inc.
777 East Eisenhower Parkway
Ann Arbor, MI 48108
Email Address: Jennifer.L.thompson@thomson.com
Phone: 989-652-7341
Fax: 989-652-7242

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.
- E.5. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.6. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.7. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.8. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.9. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- E.10. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3

accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.11. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.12. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

IN WITNESS WHEREOF:

THE MEDSTAT GROUP, INC.:

JONATHAN NEWPOL, EXECUTIVE VICE PRESIDENT

DATE

PRINTED NAME AND TITLE OF AUTHORIZED CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. GOETZ, JR., COMMISSIONER

DATE

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. GOETZ, JR., COMMISSIONER

DATE

COMPTROLLER OF THE TREASURY:

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	FA-07-
CONTRACTOR LEGAL ENTITY NAME:	THE MEDSTAT GROUP, INC.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	06-1467923

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE: _____

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.